

## Chapter TC 1

## PROCEDURE AND PRACTICE

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**TC 1.01 Communications and documents addressed to commission.** (1) All written communications and documents should be addressed to the Transportation Commission of Wisconsin, Hill Farms State Office Building, P.O. Box 7957, Madison, WI 54707-7957.

(2) Documents shall be served upon the commission by deposit in the first class mail or by delivery in person; in either case, date of service shall be the day when it is received by the commission.

(3) Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays and Sundays, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve afternoon, Christmas, New Year's Eve afternoon, New Years, Good Friday afternoon, Memorial Day, and other days as designated by the governor.

(4) The time within which an act is to be done as provided in any rule or order promulgated by the commission, when expressed in days, shall be computed by excluding the first day and including the last, except if the last day falls on a day the office is closed, the act may be done on the next day it is open. When an act is to be done in less than 10 days and the period contains both a Sunday and a legal holiday, the period shall be increased to 12 days. Legal holidays are those listed in sub. (3).

History: Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.02 Parties.** (1) Parties who seek commission approval for permits, exemptions or other relief are applicants. Those opposing applicants are objectors.

(2) Parties who file complaints are complainants.

(3) Parties of interest other than complainants, applicants, petitioners, objectors and complainants are intervenors.

(4) Parties who file petitions are petitioners.

(5) Those opposing complainants and petitioners and parties investigated or ordered to show cause are respondents.

History: Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.03 Notice of hearings.** (1) Written notice of hearing shall be deposited in the first class mail to all parties and to any other interested person requesting notice in accordance with s. 227.07, Stats.

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(2) When the general public may be injured by the commission's action, written notice of hearing shall be mailed to the clerk of each incorporated city, town or village in the area affected.

*History:* Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.04 Hearings.** (1) At any hearing an examiner may preside. An examiner shall disqualify himself or herself if by reason of personal interest in or knowledge of the matter to be heard he or she is unable to act fairly or impartially. No person who has directly participated in the investigation of the matter to be heard shall be designated or serve as examiner.

(2) The examiner, at any time prior to the commencement of a hearing, may require the parties or their counsel to appear at a pre-hearing conference for the simplification of issues or consideration of other matters which may expedite or aid in the disposition of the proceeding, and issue orders as necessary to carry out the aforesaid purposes. All stipulations made at such conference shall be made a matter of record and control subsequent proceedings.

(3) If any original document in a proceeding is lost or withheld by any person, or is otherwise unavailable, the examiner may authorize the filing or use of a copy in place of the original. The examiner may authorize the substitution of a copy of any original document received in evidence as an exhibit and return the original to the owner.

(4) Parties may be off the record only when the examiner permits. If a discussion off the record is pertinent, the examiner will summarize it on the record. Any argument before the examiner on objections to receipt of evidence or on motions to strike will not be recorded. The legal reasons for the objections or motion will be recorded.

(5) Members of the commission staff appear neither in support of nor opposition to any cause, but solely to discover and present facts pertinent to the issues.

(6) No smoking is permitted during hearings.

*History:* Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.05 Nonappearance at hearing.** (1) When the complainant, petitioner or applicant fails to appear at the hearing without good cause shown, the complaint, petition or application, as the case may be, may be dismissed by the examiner.

(2) When the respondent or objector fails to appear at the hearing without good cause shown, the allegations of the complaint, petition, application or order to show cause, as the case may be, may be taken as true, and a final order may be issued without further notice of hearing.

(3) If a party, having failed to appear at a hearing, shows good cause for such failure to the commission within 10 days after the final order is issued, the commission may set aside the order and afford further opportunity to be heard.

*History:* Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.06 Rules of evidence.** (1) Rules of evidence are governed by s. 227.08, Stats.

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(2) The presiding examiner shall rule on all objections and motions made prior to the issuance of the proposed decision.

(3) Failure of a party to object on the record to admission of any evidence shall be deemed a waiver of that objection.

(4) Any party who is dissatisfied with an examiner's ruling may submit comments explaining their position to the commission during the period set for receiving comments on the proposed order. If there is no proposed order, comments shall be filed within 15 days after the close of the period for receiving evidence. The commission shall review those comments prior to issuing a final order.

(5) Petitions or written communications addressed to the commission not admissible as evidence may be filed, but will not be considered evidence.

(6) The party introducing a document as an exhibit shall furnish a copy to all other parties in attendance.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.07 Transcripts.** (1) A stenographic, electronic or other record of all oral proceedings shall be made by the agency. A written transcript of the record shall be prepared only as deemed necessary by the agency, and unless otherwise prepared by the agency for its own use, shall not be prepared at the specific request of any person unless needed by such person for appeal or court review purposes, or other valid reasons.

(2) Except as otherwise provided by statute, if a transcript has been prepared by the agency for its own use, copies may be furnished to all interested parties upon payment of a fee of 50 cents for each page, paid in advance. If no transcript of the record has been prepared by the agency and a specific request for a transcript is made, the party making the request shall be responsible for all reasonable costs incurred by the agency in transcribing the record and in preparation of the transcript. Any party who on the basis of a verified petition can establish to the satisfaction of the agency the need for a transcript and financial inability to pay for a copy, may be furnished a copy free of cost. No fee shall be assessed against government bodies.

(3) If a proceeding has been recorded, the commission may substitute a copy of the tapes for a transcript request if no petition for judicial review has been filed. The cost per tape shall be \$11.00 paid in advance, unless otherwise provided by statute.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.08 Briefs and answers.** (1) The examiner may require briefs and answers to complaints.

(2) Whenever briefs and answers are filed, the examiner shall indicate the date on or before which they shall be submitted.

(3) Briefs shall be no more than 10 pages, typed in double space on 8½ × 11 inch paper, unless the examiner provides otherwise. Three copies of the brief shall be filed with the commission and one copy mailed to each of the other parties.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.09 Witnesses, subpoenas and depositions.** (1) Any party may request the examiner to issue subpoenas to compel the attendance of witnesses.

(2) Any party may request the examiner to issue subpoenas duces tecum to compel a witness to bring specific documents.

(3) The examiner may limit the scope of the subpoena or deny it if it appears to be unreasonable, oppressive, excessive in scope or unduly burdensome.

(4) Depositions and written interrogatories may be taken and used as evidence as provided in ch. 804, Stats.

*History:* Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.10 Close of hearing and evidence.** (1) Evidence in any proceeding will be declared closed when due opportunity to furnish relevant evidence, including proper cross-examination of witnesses and rebuttal, has been afforded all parties. If by stipulation of the parties or by direction of the examiner documentary evidence is permitted or directed to be introduced subsequent to the close of testimony, the evidence will be declared closed when such documentary evidence is received or when the specified time for furnishing it has elapsed without its being furnished. The examiner may extend the time as originally prescribed for filing such evidence.

(2) When the evidence is closed, but before a proposed decision is issued, the examiner may reopen the hearing for the taking of further evidence.

(3) A hearing is closed when evidence is closed and when after the proposed decision is issued any period fixed for filing of briefs, comments or presentation of oral argument has expired. If the time for filing briefs or comments has expired and the briefs or comments of one or more parties are not filed within such time, the commission may proceed to its determination of the proceeding.

*History:* Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.11 Comments on proposed decisions.** (1) Where a proposed decision is prepared and circulated, comments shall be filed within 15 days of deposit in the first class mail or delivery in person unless a different period is specified by the examiner or commission.

(2) Oral argument will be held only where directed by the commission. Requests for oral argument shall be included with the comments.

*History:* Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.12 Final examiner decisions.** The examiner's decision shall be final in all cases involving motor vehicle registrations and drivers licenses.

*History:* Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.13 Commission records.** (1) Commission records shall be open and available to the public as required by ch. 19, Stats.

(2) Written requests for copies of commission records shall be addressed to the chairman.

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(3) The fee shall be 75¢ per page, paid in advance if more than \$5.00.

History: Cr. Register, October, 1982, No. 322, eff. 11-1-82.

**TC 1.14 Environmental review.** (1) Approval of construction of major railroad facilities shall be screened using a screening worksheet to determine whether an environmental impact statement is required.

(2) The following types of commission actions shall not require an environmental impact statement:

- (a) Approval of abandonment of rail passenger service.
- (b) Approval of abandonment of train service on a line.
- (c) Establishment of intrastate railroad rates.
- (d) Approval of reduction of rail service at stations.
- (e) Orders relating to railroad-highway crossings.
- (f) Approval of depot building removal or relocation.
- (g) Approval of railroad station abandonment.
- (h) Approval of spur track abandonment.
- (i) Granting of applications by water carriers.

(3) Any action not specifically categorized in subs. (1) and (2) is presumed not to be a major action which may significantly affect the human environment. The commission shall consider on an individual basis, any such action brought to its attention, and may determine that a screening worksheet is required to determine whether an environmental impact statement is needed.

(4) The procedure for an environmental screening shall be that outlined in s. PSC 2.91.

(5) If an environmental impact statement is required, it shall be prepared in the manner outlined in ss. PSC 2.92, 2.93, 2.94 and 2.95.

History: Cr. Register, October, 1982, No. 322, eff. 11-1-82.